

STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

MUR: No. 06-0005

STATEMENT OF REASONS OF EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the Statement of Reasons showing reason to believe violations of the Citizens Clean Elections Act and or the Commission rules (collectively, the “Act”) may have occurred.

I. Procedural Background

On July 20, 2006, David Waid, Chairman of the Arizona Democratic Party (“Complainant”), filed a complaint against Len Munsil (“Respondent”), a participating candidate for Governor, alleging possible violations of Arizona election law, specifically that the Respondent failed to report the receipt of in-kind contributions, or alternatively, incurred expenses in excess of the available cash on hand. (Exhibit A). On June 28, 2006, the Respondent responded to the complaint. (Exhibit B).

II. Alleged Violations

A. In-Kind Contributions from Campaign Consultants

A.R.S. § 16-945(A) states, “A *participating candidate may accept early contributions only from individuals and only during the exploratory period and the qualifying period...*” (Emphasis added.)

The complaint references the Respondent’s June 30th campaign finance report. (Exhibit C). In the June 30th report, the Respondent reports expenditures to “Sproul & Associates” and “The VBP Group.” The Complainant suggests the pattern in which the expenditures were reported implies a payment plan to both of the aforementioned consultants. The following is a breakdown of the expenditures made to the consultants as reported in the Respondent’s June 30th campaign finance report:

<i>Date</i>	<i>Expenditure To</i>	<i>Amount</i>
01/11/2006	SPROUL & ASSOCIATES	\$121.00
02/05/2006	SPROUL & ASSOCIATES	\$5,400.00
03/20/2006	THE VBP GROUP	\$2,000.00
03/21/2006	SPROUL & ASSOCIATES	\$5,000.00
03/28/2006	SPROUL & ASSOCIATES	\$2,919.54
04/28/2006	SPROUL & ASSOCIATES	\$1,000.00
05/22/2006	THE VBP GROUP	\$2,500.00
05/30/2006	SPROUL & ASSOCIATES	\$6,000.00

The Complainant believes that if a payment agreement was in place, it was not honored in the month of April, due to a lowered payment to “Sproul & Associates” and lack of payment

to “The VBP Group.” The Complainant states, “By not paying the campaign consultants at their full market rate- or not at all in the case of the VBP Group – the campaign effectively received an in-kind contribution from the consultants, which it failed to report.”

The Respondent contends that its contract with “Sproul & Associates” contained a provision which allowed it to be terminated by either party at any time. In addition, the Respondent asserts that an agreement was made with “Sproul & Associates” for the month of April, which specified that services would not be performed beyond a minimal amount.

The Respondent also argues that there was no monthly payment plan with “The VBP Group,” and that for the month of April no services were performed by the consulting group. The Respondent mentions, that Vernon Parker, the head of “The VBP Group,” volunteered his time. An individual may volunteer their services pursuant to A.R.S. § 16-901 (5)(b)(i) which states a contribution does not include, “*The value of services provided without compensation by any individual who volunteers on behalf of a candidate, a candidate’s campaign committee or any other political committee.*”

The Executive Director recommends that the Commission further investigate the services provided by Mr. Parker both in his voluntary capacity and in his official capacity as part of “The VBP Group,” as well as the agreement the Respondent had with “Sproul & Associates,” to confirm whether a violation of A.R.S. § 16-945(A) has occurred.

B. Incurred Debt Exceeding Cash On Hand

A.A.C. R2-20-104(D)(6) states that a participating candidate shall, “*Limit campaign expenditures. Prior to qualifying for clean elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State’s office, a candidate may incur debt or make an expenditure, not to exceed the sum of the cash on hand and the applicable spending limit.*” (Emphasis added).

The Complainant argues that if a violation didn’t occur in the sense of an illegitimate in-kind contribution, “it incurred an obligation to pay these consultants that, when added to all other expenses incurred by the end of April, exceeded the cash on hand.”

The Respondent argues that services were not performed by “The VBP Group,” and that “Sproul & Associates” did not perform services in excess of the minimal amount agreed to.

The Campaign Finance Reports covering the period of the initial registration date (December 1, 2005) to the day preceding the receipt of Primary Funding (May 4, 2005) is attached. (Exhibit D). A review of the report shows that the Respondent had an ending cash balance of \$1,433.73 on hand.

The Executive Director recommends that the Commission further investigate the services provided by “The VBP Group” and “Sproul & Associates” to confirm whether the services rendered exceeded the cash on hand, in violation of A.A.C. R2-20-104(D)(6).

III. Investigation after Reason to Believe Finding

Based on the complaint, the Respondent’s response, and the Respondent’s campaign

finance reports, the Executive Director recommends the Commission find reason to believe that violations of the Act or Commission rules may have occurred, warranting an investigation.

If the Commission determines by an affirmative vote of at least three (3) of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. During that period, the Respondent may provide any explanation to the commission, comply with the order, or enter into a public administrative settlement with the commission. A.R.S. § 16-957(A) & A.A.C. R2-20-208(A).

After the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. A.A.C. R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit.

Upon expiration of the fourteen (14) days, if the commission finds that the alleged violator remains out of compliance, the commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. A.A.C. R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three (3) of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). A.A.C. R2-20-217.

Dated this ___ day of August, 2006

By:

Todd F. Lang, Executive Director